



2013 Reform Legislation Overview

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Believing in Better

Workers' Comp Reform Act, 2013
Public Chapter 289



Bill Signing

- <https://www.dropbox.com/s/rd5u0sirquxin3l/worker%27s%20comp%20signing.mov>



Major Purposes

- Conflicts can be resolved quicker
 - Employees don't have to wait years for benefits
- Quicker return to working life
- More assistance for injured workers
- More consistency among claims
- Less obstacles to medical care



Workers' Compensation Court

- Judicial function moved from courts to DWC for permanency issues
 - Effective July 1, 2014
 - Judges appointed by Administrator after July 1, 2013
 - 30 years old
 - 5 years appropriate experience
 - 6 year term; maximum of 3 terms
 - One Chief Judge
 - Judges can be removed for non-performance or for cause
 - Tennessee Code of Judicial Conduct



Workers' Compensation Court

- Judges will be located across state
- Judges will receive training prior to serving
- Selection process will include consideration of comments of “business, labor and legal communities concerning the suitability” of applicant
- Court hearings will be conducted in accordance with TN Rules of Civil Procedure and Rules of Evidence



Workers' Compensation Appeals Board

- Three judges
 - Licensed attorneys with 7 years appropriate workers' compensation experience
 - Appointed by Governor
 - Term of 6 years, limit of 2 terms
- After going to Workers' Compensation Appeals Board, parties may appeal to Supreme Court



Administrative Structure

- DWC becomes autonomous division of Department of Labor & Workforce Development for administrative purposes only
- Administrator is appointed by the Governor for a term of 6 years (limit of 2 terms)
 - Can be removed for cause or nonperformance



Ombudsman

- Robust education and assistance program for those who do not have an attorney
 - Neutral, no legal advice
 - Provides information on rights and obligations of all parties
 - Effective direction on preparation of forms
- Helps injured workers and employers understand the process and their roles
- Implementation prior to 2014



Compensability

- Clearer Standard for Causation
 - Injury is compensable if it arose “**primarily** in the course and **scope** of work” when all other possible causes are considered.
- Statute must be construed fairly impartially, and in accordance with basic principles of statutory construction
 - Replaces language that statute must be liberally construed in favor of the employee



Medical - Panels

- Selection of Medical Panel Simplified
 - One panel, not three variations
 - Treating physician refers worker to specialist
 - Employer has 3 days to give a panel of 3 or treating physician's referral stands
- Penalty for failure to provide panel timely
- Goal is greater continuity of care, less friction, speedier treatment

A graphic of a single puzzle piece in the top left corner, with a blue gradient background. The puzzle piece is light blue with a darker blue outline and is positioned as if it's part of a larger puzzle.

Medical – Physician Communications

- Employer is allowed to communicate with treating physician (orally or writing)
- Removes requirement that employee must sign a waiver before employer can review records
- Only applies to medical records related to treatment for the workers' compensation injury



Mediation

- Greater emphasis on successful program
 - Helps resolve temporary benefits and medical treatment disputes from **start of claim**
 - Continues to help parties resolve issues related to permanent benefits
 - Additional requirements to act in good faith
- New certification of dispute process
 - If parties cannot agree, disputes must be certified before appearing before judge



New Penalties

- Failure to mediate in good faith
- Failure to comply timely with order or judgment issued by a WC judge
- Failure of employer to timely provide appropriate medical treatment
- Failure of employer to provide panel
- Wrongful failure of employer to pay TTD
- Wrongful failure to satisfy terms of approved settlement



Disability Benefits Timeline

Date of Injury

If worker does not
return to work for ER at
100% wage after initial
disability period

Temp Total Disability	PPD = Imp Rating * 450 * 66 ²/₃% AWW	Additional Benefits
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Reaches Maximum Medical Improvement



Temporary Total Disability Benefit

- Amount unchanged
- Ends when employee reaches MMI
 - “when the treating physician ends all active medical treatment and the only care provided is for the treatment of pain.”
- 104 additional weeks for some mental injuries eliminated
- Payments post MMI offset against PPD



Permanent Partial Disability

- If injured worker returns to work with **any** employer earning 100% of pre-injury wage
 - Benefit equals: impairment rating X **450** X $66\frac{2}{3}\%$ average weekly wage
 - Number of maximum weeks increased from 400 to 450
 - Impairment rating “shall not consider complaints of pain”
 - AMA Guides



Permanent Partial Disability

- If employee does not return to work or makes < pre-injury wage:
 - Impairment rating X 450 X $66\frac{2}{3}\%$ AWW plus
 - Factor of 1.35 if no return to work
 - Factor of 1.45 if no HS diploma or GED
 - Factor of 1.2 if employee > 40 years of age
 - Factor of 1.3 if unemployment in county where employed > 2 points above state average for year prior to initial period of compensation



Permanent Partial Disability

- All impairment ratings to **body as a whole**
 - **Scheduled members deleted**
- Impairment rating from treating physician is presumed to be accurate
 - Rebuttable by a preponderance of evidence
- Reconsideration period is impairment rate * 450 weeks



Medical Treatment Guidelines

- To be adopted by 2016
- Any treatment that follows guidelines presumed to be medically necessary
 - Rebuttable by clear and convincing evidence
 - Addresses an area of concern to employees and physicians
- Intended to reduce disputes, improve quality and timeliness of medical treatment
- First guideline will be on pain management



Other Features of Reform Law

- E-Billing: allows medical providers to submit bills electronically
- Education and Outreach Program
 - Employees, Employers, Physicians, Adjusters, Attorneys
- Allows for 5 years of PTD benefits for individuals who are w/in 5 years of eligibility for SS rather than at age 60



Other Provisions

- Medical Payment Committee
 - Disputes on medical bill payments between providers and insurers
 - Advises Administrator on matters related to medical fee schedule
- Medical Advisory Committee
 - Medical treatment guidelines
 - Utilization Review problems
 - Other medical issues as needed



New Reporting

- The Division of Workers' Compensation shall, on or before July 1, 2015, and annually thereafter, review the impact of the Workers' Compensation Reform Act of 2013 on the workers' compensation system" in Tennessee and deliver a report of its findings to each member of the General Assembly.
- Metrics



Sunset

- “The division of workers’ compensation created pursuant to this act shall terminate pursuant to title 4, chapter 29 on June 30, 2018.”
 - Provides the Legislature an opportunity along with new annual report and reports from WCAC to remain informed on the status, challenges, and opportunities of the workers’ compensation system.



Employee Misclassification Bill

- Misclassification of employees to avoid proper WC insurance premium
 - Classification, payroll, # of employees
 - Applies to the construction services industry
- New penalties: greater of \$1,000 or 1 1/2 * average yearly WC premium – amount appropriately paid
- Possible referral to district attorney
- Implementation



Implementation

- Rules will be formulated for various sections of the reform bill
 - Public Hearings
 - Workers' Compensation Advisory Council
 - Government Operations Committee
- Selection of Judges
 - Timeline
- Treatment Guidelines



Implementation

- Selection of Ombudsman
 - Development of Ombudsman program
- Quality Assurance Program
- Certification of Dispute process
- Metrics
- Education program



Implementation

- Process
 - Draft document
 - Peer Review
 - Input from outside sources
 - Refine
 - Walk through for reality checks
 - Implementation



Impact on Employees

- More assistance to understand the process
- Process that is easier to understand
- Emphasis on resolving disputes
- Faster access to “court”
 - Expedited hearings for catastrophic injuries
- Improved, quicker medical treatment
 - Fewer delays for utilization review
- Quicker return to pre-injury jobs



Impact on Employers

- Fairer, more predictable environment
 - Quicker, simpler resolution of claims
 - Improved relations with injured workers
 - Less concern about venue
 - Lower administrative costs
 - Quicker return of employees to their jobs
 - Less disruption in operations
- More conducive environment for expanding operations/coming to Tennessee



Expected Results of Reform

A workers' compensation system
that is fair, efficient, and provides
better outcomes for employees and
employers